

November 26, 1958

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CONCORD, N.H.

Mr. Paul E. Farnum
Acting Commissioner of Education
State House Annex
Concord, New Hampshire

Dear Mr. Farnum:

This is in reply to your letter of November 21, 1958 in which you point out an inconsistency in the Laws of 1957 relative to the manner in which helping teacher positions are to be established.

RSA 186:11 XXIII (supp) provides, inter alia, that the State Board of Education shall fix the State's share of ^{salaries for} approved helping teachers for supervisory unions. RSA 186:11 XXIV defines the term "helping teacher" as referred to in Paragraph XXIII. By virtue of Laws of 1957 252:2, the Legislature amended paragraph XXIV by adding the following sentence after the definition of the term "helping teacher":

"All helping teacher positions hereinafter established shall be only after a majority of the school districts in the supervisory union representing not less than 85% of the total pupils in the supervisory union have voted favorably upon the establishment of the position."

The effective date of this amendment was July 1, 1957.

On the other hand immediately following the appropriation for the Board of Education for the fiscal year ending June 30, 1959 in Laws of 1957 321:1 we find the following language:

"All helping teacher positions hereinafter established shall be only after a majority vote in each of the school districts in the supervisory union requesting the establishment of the position of helping teacher at their respective annual school district meetings."

The footnote from which we have just quoted appears on Page 514 of Laws of 1957. Laws of 1957 Chapter 321 in which the footnote appears took effect July 1, 1958.

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A footnote containing language with respect to helping teacher positions identical to that last quoted above also appears in Laws of 1957 320:1 immediately following the appropriation for the Board of Education for the fiscal year ending June 30, 1958 (see Page 454 Laws of 1957). In view of the fact that we are now in the second year of the biennium, we look to the footnote in Laws of 1957 321:1 rather than that set forth in 320:1.

You have in effect inquired whether the language contained in Laws of 1957 252:2 first quoted above, or the language contained in Laws of 1957 321:1 last quoted above, shall control with respect to the establishment of future helping teacher positions.

Since the effective date of Laws of 1957 321:1 is subsequent in time to the effective date of Laws of 1957 252:2, we are of the opinion that the former controls and that henceforth helping teacher positions may be established "only after a majority vote in each of the school districts in the supervisory union requesting the establishment of the position of helping teacher at their respective annual school district meetings."

You have also inquired whether there is any way a supervisory union could budget for a helping teacher position during the month of December and have the constituent school districts adopt the helping teacher position at the annual meeting the following March. In our opinion the answer is in the negative. RSA 189:47 provides in part that "[A]t a meeting held before January 1st of each year the supervisory union board shall adopt a budget required for the expenses of the supervisory union for the next fiscal year . . ." (emphasis added) We fail to see how the salary of a helping teacher can be deemed to be an "expense of the supervisory union" until after the constituent school districts have voted to establish the position.

In your letter you inquired whether or not you were correct ". . . in assuming that a (supervisory) union board could not vote to purchase property such as a house for the headquarters of a union office, and that the only way a union board could establish such a center would be on a long term lease of five to ten years."

We are of the opinion that under existing statutes a supervisory union has no power ^{by} itself to acquire real property by purchase, lease or otherwise.

The Legislature has specifically provided that both school districts and cooperative school districts shall be corporations with power to sue and be sued and to acquire, hold and dispose of real and personal property for the use of the schools therein. See RSA 194:2 and RSA 195:6. We find no similar language in any of the statutory provisions with respect to supervisory unions and we deem the absence of such language an indication that the Legislature did not intend the supervisory unions to have the same powers as school districts and cooperative school districts. Since supervisory

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unions are not accorded the status of a legal entity, it follows that they cannot acquire real estate either by purchase or by lease.

Very truly yours,

GTR/m .

George T. Ray, Jr.
Assistant Attorney General